

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1072 of 1997

in

CIVIL APPLICATION No. 484 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 YES 2 TO 5 NO

SHANABHAI KIDIYABHAI SINCE DECD THROUGH HEIRS

Versus

STATE OF GUJARAT

Appearance:

MR DT SONI for Petitioners
SERVED for Respondent No. 1, 7, 8
SERVED BY AFFIXING for Respondent No. 3
UNSERVED AS EXPIRED for Respondent No. 5

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 09/10/97

ORAL JUDGEMENT {Per : Thakkar, J.}

Admitted. Mr. R.N Shah, learned counsel for Respondent Nos. 3 to 6 and Mr. P.B Bhatt, learned AGP for Respondent Nos. 1,2,7 and 8 waive service of notice of admission. In the facts and circumstances of the case, appeal is taken up for final hearing today.

This appeal is filed against an order passed by the learned Single Judge in Civil Application No. 484 of 1996 in Special Civil Application No. 2146 of 1986, decided on July 24, 1997. That application was filed by the appellant-applicants for bringing heirs and legal representatives of deceased Shanabhai Kadiabhai on record. The petition was of 1986. After the petitioner died, his heirs and legal representatives filed the above application to bring them on record. The said application was rejected by the learned Single Judge. It appears that other persons were also on record. As Civil Application was rejected and heirs were not permitted to be brought on record, the main matter i.e., Special Civil Application No. 2146 of 1986 stood automatically dismissed. It is against that order that the present Letters Patent Appeal is filed by the Appellants. At the time of preliminary hearing, notice was issued for admission as well as for final hearing which was made returnable on September 16, 1997.

We have heard the learned counsel for parties. In the facts and circumstances of the case, the order passed by the learned Single Judge requires to be set aside. Apart from the fact that ordinarily in such matters, application to bring on record heirs and legal representatives ought not to have been dismissed, even otherwise also, as per the settled law, if other person is already on record, it can be said that estate was sufficiently represented. In such cases, the petition does not abate. This Letters Patent Appeal is, therefore, allowed. Order passed by the learned Single Judge is set-aside.

In our opinion, Civil Application deserves to be granted and accordingly, Civil Application No. 484 of 1996 is allowed. Prayer is granted. Necessary corrections will be carried out on or before November 20, 1997.

Special Civil Application No. 2146 of 1986 will now be placed before the learned Single Judge for disposal in accordance with law. Appeal is accordingly

allowed with no order as to costs.

We may observe that we have not gone into the merits of the matter and as and when the matter will be heard on merits, the learned Single Judge will decide the same in accordance with law.

{C.K Thakkar, J.}

{Miss R.M Doshit, J.}

Prakash*